

UNITED STATES DISTRICT COURT  
WESTERN DISTRICT OF NEW YORK

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DERRICK GRUBE,

Plaintiff,

Case # 15-CV-318-FPG

v.

DECISION AND ORDER

TOWN OF CHEEKTOWAGA,

Defendant.

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This action was commenced on April 13, 2015, when *pro se* Plaintiff Derrick Grube filed a Complaint against Defendant Town of Cheektowaga, and paid the requisite filing fee. ECF No. 1; unnumbered docket entry dated 4/13/15. The Clerk of Court issued a Summons for the Defendant on April 13, 2015, and on April 30, 2015, the Plaintiff filed a motion with this Court requesting service by the U.S. Marshal. ECF No. 2. By Order dated May 14, 2015, that application was denied because the Plaintiff provided no basis for his request. ECF No. 3. The Court's Order of May 14, 2015 further reminded the Plaintiff that "he must serve the summons and complaint upon defendants within 120 days of filing of the complaint or this action may be dismissed without prejudice. *See* Fed. R. Civ. P. 4(m)." *Id.* Despite this clear directive, there is no indication on the docket that Plaintiff has caused that Summons and the Complaint to be served on the Defendant.

Federal Rule of Civil Procedure 4(m) provides that "[i]f a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service be made within a specified time." By Order to Show Cause dated November 9, 2015, this Court directed the Plaintiff to show cause, "in writing and before November 23, 2015, why this case should not be dismissed under Fed. R. Civ. P. 4(m) for failure to effect service within 120 days."

ECF No. 4. The Order to Show Cause warned the Plaintiff that the “failure to comply with this order will result in the dismissal of this action.” *Id.*

The Plaintiff has not responded to the Order to Show Cause in any fashion. As a result, and based upon the record in this case, the Court finds that the Plaintiff has failed to serve the Complaint within the required time frame. There is no indication that the Plaintiff has been diligent in his efforts to effect service in a timely manner, and despite being ordered to show cause why this case should not be dismissed for failing to serve the Complaint, the Plaintiff has ignored the Court’s Order, and has provided no explanation or reason to demonstrate that dismissal of this action is not appropriate. While the Plaintiff is proceeding *pro se*, that does not excuse his failure to comply with the very basic directives of the Court’s previous Orders. Indeed, “all litigants, including *pro se*’s, have an obligation to comply with court orders.” *Minotti v. Lensink*, 895 F.2d 100, 103 (2d Cir. 1990) (internal quotation marks omitted).

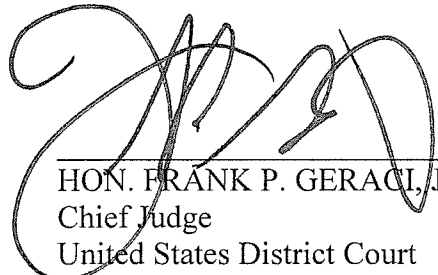
Because the Plaintiff has failed to serve the Complaint within the required 120 days, and because the Plaintiff has not provided any response to the prior Order to Show Cause that would demonstrate that dismissal is not appropriate, this case must be dismissed.

#### CONCLUSION

For the foregoing reasons, this case is dismissed pursuant to Fed. R. Civ. P. 4(m), and the Clerk of Court is directed to close this case.

IT IS SO ORDERED.

DATED:       Rochester, New York  
              January 7, 2016



HON. FRANK P. GERACI, JR.  
Chief Judge  
United States District Court